

December 21, 2004

In reply to: LS-03-04

Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service
USDA STOP 0249
1400 Independence Avenue SW
Washington, DC 20250-0249

Dear Sir or Madam:

The New Jersey Department of Agriculture has prepared the following comments regarding the Country of Origin Labeling of seafood. These comments seek to provide evidence that aquacultured shellfish products in New Jersey should be appropriately identified as “farm-raised” or “farmed”, rather than as wild products. Although we refer to only shellfish farmed in New Jersey, many of the issues we address certainly would include shellfish farmed in other states.

The two shellfish types that are currently aquacultured in New Jersey are the hard clam *Mercenaria mercenaria* and the eastern oyster *Crassostrea virginica*. Because these shellfish are produced on leased grounds, shellfish in New Jersey are clearly classified as farm-raised products, according to the “farm-raised fish” definition as provided in publication of Part 60- Country of Origin Labeling for Finfish and Shellfish in the Federal Register Vol. 69, No. 192, October 5, 2004.

As is the case with many states, aquaculture in New Jersey is defined as a form of agriculture. In N.J.A.C. 2:89, Subchapter 1, New Jersey has adopted a slightly modified version of the Food and Agriculture Organization of the United Nations (FAO) definition of aquaculture:

“Aquaculture means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators.” This definition would clearly include clam and oyster farming, since many of the criteria are met by currently employed production methods.

Under N.J.A.C. 2:89, Subchapter 2, the New Jersey Department of Agriculture also administers the Aquatic Farmer License Program. This License is required for all commercial aquatic farms in New Jersey. In return for participation in the Aquatic Farmer License program, farmers receive certain benefits and protections that are available to other segments of production agriculture. Those aquatic farmers that implement standardized agricultural management practices receive additional Right to Farm protections. The nature of the production methodologies that farmers must employ, in addition to the legal definitions and protections offered, clearly make shellfish produced in aquaculture a farm-raised product.

Growout of cultivated shellfish in New Jersey occurs on bottom leased from the State of New Jersey, to which the lessee has exclusive rights and use. The most important distinction between farm-raised products and wild products is the issue of ownership of the product. From hatching through harvest and until the clams are sold, cultivated hard clams remain the private property of the farmer throughout the entire production cycle. In fact, penalties exist to protect intertidal lease area from trespass, and the gear and livestock from vandalism and theft. With some oyster cultivation where seed is purchased from a hatchery, especially those produced in rack-and bag systems, the farmer also has ownership of the product throughout the entire production process.

Although other methods of structural and non-structural oyster culture rely on seed obtained from wild set or public seed beds, once the seed is transferred to the leased grounds, that product becomes private property, and the same rights and exclusions apply throughout the remainder of the production cycle. The difference between oysters cultivated in this manner, and wild harvest oysters is that the farmer has intervened in the natural life cycle, and from that point on, makes a continued investment to increase growth and/or survival.

In addition to the aforementioned benefits, rights, and exclusivity offered to the aquaculture community by means of the Aquatic Farmer License program, other Subchapters under N.J.A.C. 2:89 include a protocol to manage aquatic animal health.

Finally, aquatic farmers report their production and harvest information to the USDA Census of Agriculture. According to 2002 NAICS Definitions, the U.S. Census Bureau clearly classifies mollusk, mussel, and oyster production as “farm-raising” activities.

With the production methodologies employed in shellfish culture, the protections conferred to the aquaculture industry through agricultural legislation, and the definition already provided by publication of the Country of Origin Labeling for Finfish and Shellfish, we believe a “farm-raised” or “farmed” label is the accurate way to inform the seafood consumer about the source and origin of shellfish derived from aquaculture.

Sincerely,

Linda J. O'Dierno

Linda J. O'Dierno
Coordinator/Fish & Seafood Program